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Brett

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: Hetherington

Serial No.: 09/684,205

Group No.: 2673

Filed: October 6, 2000

Examiner: J. Nguyen

For: MOVING DIELECTRIC, CAPACITIVE POSITION SENSOR CONFIGURATIONS

APPELLANT'S REPLY BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

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MAY 28 2004

Technology Center 2600

Dear Sir:

This Reply Brief is being filed in response to new issues raised in the Examiner's Answer of March 19, 2004.

First, in the Examiner's "Response to Argument" section, paragraph 1, the Examiner characterizes Appellant's argument that the Shahoian reference fails to anticipate merely because the dielectric member 107 is actually bonded to one of the movable electrodes 110. However, this is not the only reason. In particular, Appellant's invention utilizes a movable dielectric between stationary capacitor plates, thereby precluding anticipation. Note in paragraph 3 on page 10 of the Examiner's Answer that agreement was reached that the Shahoian reference fails to teach or suggest a moving dielectric between two stationary plates. The Examiner further concedes that the Shahoian reference teaches that one of the conductive plates is in fact moved, contending that the combination with the Baker reference addresses this inconsistency. However, the importation of the teachings of Baker would defeat the points of novelty of Shahoian, thereby defeating *prima facie* obviousness. Now the Examiner relies on "the knowledge generally available to one of ordinary skill in the art," arguing that since the detecting capacitor plate of Shahoian et al. is connected to a power source ... this causes unwanted signals to be detected, leading to an inaccurate position, however, Appellant cannot make sense of this additional argument. With respect to the rejection of claim 10, the Examiner is attempting

to add further "discussions" which should be disregarded by the Board. With respect to the rejection of claims 11-17, the Examiner now states that the "joystick lever" overlooked by the Examiner in the record below is "similar to the elongated member of claim 1." Arguments of this kind at this late stage in the proceedings should be overlooked. The Examiner has also presented new arguments with respect to claims 21-24 which should also be disregarded. Finally, with respect to the rejection of claims 25 and 26 under 35 U.S.C. §112, second paragraph, the Examiner maintains the rejection on the grounds that Figure 1A and page 10, lines 13-18 of the instant specification discuss "an upper PCB 106 preferably featuring a continuous or unbroken metallization pattern 114 on its lower surface." This simply discusses a preferred configuration in the preferred embodiment, not all of the configurations in all embodiments. Indeed, Appellant is not relying on this particular configuration for support, but rather, on other portions of the disclosure, including Figure 8, for example, which shows the interaction between tow-tie-shaped electrodes. This is not a new argument being presented by Appellant; rather, it has already been made of record in previous responses to previous Office Actions.

In summary, the Examiner's reasoning is flawed, and the claims of this application are allowable. As one indication of the Examiner's inexperience, note that the Examiner continues to object to the disclosure on the grounds "the claim" is used on page 22 of the specification as a transition to the claims, which begin on page 23. The Examiner states this "must be deleted." The undersigned has drafted *hundreds* of patent applications using "I claim" or "we claim." The Examiner is wrong in this regard, just as the Examiner is wrong in rejecting these claims on appeal.

Respectfully submitted,

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